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18 OCT 1965

MEMORANDUM FOR: Deputy Director for Support

SUBJECT : CIA Regulatory Issuances

1. In response to subparagraph e. of Col. White's memorandum DD/S 65-1607, there is attached a report of findings, conclusions, and proposals for improving the working of the system for CIA regulatory issuances.

2. Based upon this report, it is recommended that:

a. The Deputy Director for Support request the Executive Director-Comptroller to establish a Committee on Regulations, under the chairmanship of the Deputy Director for Support and comprised of senior representatives from each directorate and independent office, to review proposed regulations that involve innovations of policy or that are the subject of disagreement between the originating office and other offices.

b. The Deputy Director for Support require, before accepting a proposed regulation for coordination,

(1) That the originating office comply with [redacted] 1.b., which specifies that the originating office "shall obtain the comment of other offices having related or interdependent responsibilities and functions or whose activities or personnel are substantially affected thereby, before submitting it...."

(2) That the originating office submit a detailed justification of the proposed regulation.

c. The Deputy Director for Support, after accepting a proposed regulation, before commencing coordination shall,

(1) Review the proposed regulation to evaluate its need and its effect on existing regulations,

(2) In those instances where there are policy innovations or apparent differences between originating offices and other offices, submit the proposed regulation to the Committee on Regulations.

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d. The Deputy Director for Support fix and enforce a specific deadline for the coordination of each proposed regulation, not to exceed 30 days. A longer coordination period may be granted on written request. Noncompliance with the deadline shall be brought to the personal attention of the offending directorate's member on the Committee on Regulations.

e. A special effort be made to minimize the use of book dispatches in lieu of regulatory issuances.

f. The Office of the General Counsel be requested to submit recommendations on the form of regulatory issuances, paragraphs, organization, and on documentation of the history of amended regulations.

/s/ J. S. Earman

J. S. Earman
Inspector General

Attachment
(Report: CIA Regulatory Issuances)

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CIA REGULATORY ISSUANCES

Background

1. The suggestion for review of Agency regulatory issuances was included as one of a number of areas for Inspector General exploration in a memorandum from the Deputy Director for Support of 7 April 1955. In his memorandum Colonel White stated, "the Agency regulatory process has also been a vexing and time-consuming process which, in my judgment, continues to leave a great deal to be desired. Practically all components of the Agency are at times involved, and, of course, any change in regulations has an Agency-wide effect. There are a number of questions involved: Is our coordination system right? Is there a duplication between Agency regulatory issuances and other intra-Agency issuances, employee bulletins, financial instructions, etc.?"

Time and Scope

2. The review consisted of interviews with senior representatives of the four Agency directorates and of the Office of General Counsel, the Chief of the Regulations Control Staff/DDS, and the Chief of the Publications Control Group/DDP. Substantively, the review was restricted to an examination of the methods which are used to develop, coordinate and distribute Agency regulatory issuances. To assist the evaluation of the current Agency system, the State Department regulations and the 1956 Inspector General report, "Survey of CIA Regulations," were consulted.

Types of Agency Regulatory Issuances

3. Two directorates issue regulations, instructions and notices which are Agency-wide or affect more than one Agency directorate.

a. The Deputy Director for Support has the primary responsibility for developing, coordinating and distributing Headquarters Regulations (HRs), Headquarters Notices (HNs), Headquarters Handbooks (HNBs), and all Employee Bulletins. Generally each Headquarters Regulation, Headquarters Notice, and Headquarters Handbook [redacted] for which the Deputy Director for Support also has the responsibility in regards to development and coordination but which are authenticated and distributed by the Deputy Director for Plans.

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c. A third regulatory issuance which is used both by the Deputy Director for Support and the Deputy Director for Plans is the Book Dispatch.

d. Beyond these issuances affecting more than one or all of the Agency directorates and independent offices, each directorate and within the directorates, each office, and very often lesser components issue intra-office instructions and notices. These issuances are only applicable to the office in which they have been issued. Since the Agency has no central repository at which all of these issuances are available, a specific inventory of intra-office issuances would have to be made and a special review undertaken in order to determine their compliance or noncompliance with Agency regulations. For purposes of this report, it is presumed that these intra-office instructions are consistent with over-all Agency regulations.

Initiation and Coordination of Regulatory Issuances

4. [] revised 10 April 1964) states that "policy, doctrine or procedure that is Agency-wide in application shall be published within the regulatory system...Agency regulatory issuances shall be developed as a cooperative effort and conflicting views shall be resolved by appropriate authority before authentication and publication. The office which proposes a regulatory issuance shall obtain the comments of other offices having related or interdependent responsibilities and functions or whose activities or personnel are substantially affected thereby before submitting it to the Deputy Director for Support. The Deputy Director

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for Support will determine the formal coordination to be effected and will establish the time limits within which coordination action shall be completed."

5. The bulk of the Headquarters regulations [redacted] are initiated by elements of the DDS. Whenever an amendment or change for an existing regulation or a new regulation becomes necessary, an appropriate draft is submitted to the Regulations Control Staff/DDS. At the time of its submission this draft will have been informally coordinated within the DDS structure. The Regulations Control Staff assigns a job number, checks references and attachments of the draft regulation or draft amendment or change, where necessary edits the draft and puts it into appropriate regulatory language and submits a final draft copy via the Special Planning Assistant to the Deputy Director for Support for coordination by the "Big Six": the Executive Director-Comptroller, the Deputy Director for Plans, the Deputy Director for Intelligence, the Deputy Director for Science and Technology, the Office of General Counsel, and the Inspector General. Where appropriate, the Special Planning Assistant/DDS sets a deadline by which coordination by the "Big Six" is to be completed. In many instances, however, no time limit will be set. In case of serious objections on the part of one or more of the coordinating offices, a second round of coordination may become necessary and will be mandatory with regard to the Office of General Counsel in order to insure compliance with all legal requirements. In addition to its substantive coordination responsibility, the Office of General Counsel also determines which Agency-wide regulatory issuances must be authenticated by the Director of Central Intelligence and which issuances can be promulgated over the signature of the Deputy Director for Support.

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7. Book Dispatches, having in fact the force of a regulatory issuance, are in all cases coordinated with and released by the Deputy Director for Plans or an appropriate senior DDS officer regardless of the office of origin. Book Dispatches of this type

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which originate within the DDP and concern themselves exclusively with CS operational matters are coordinated within the DDP only.

Discussion

8. The primary problem in the working of the Agency regulatory system is the excessive delay in the coordination and promulgation of regulatory issuances. There are a number of reasons for these delays. Because of the over-all DDP responsibility for all Agency overseas establishments, the Deputy Director for Plans has a further reaching and more specific requirement for a thorough review of all proposed regulatory issuances than the other coordinating offices with the exception of the Office of General Counsel. The Chief, Operational Services (C/OPSER), has been designated DDP representative for Agency regulatory issuances. His staff for this is the Publications Control Group (DDP/PC), which is also responsible for [redacted]. The study and research considered necessary for adequate DDP review of proposed regulations, when combined with the high volume of proposals and the other work of C/OPSER and DDP/PC, has made them a delay point in the processing of Agency regulatory material.

9. Some other delays are caused by the Office of General Counsel when research into legislation, Comptroller General decisions, or other precedents cannot be completed within set time limits. Finally, delays may be caused by disagreement, requested additional time by coordinating offices that find the problem too complex for ready response, or for minor internal difficulties, e.g. illness, leave, etc., of personnel.

10. In this connection, it might be cited that a revision of the Agency Travel Regulation to make it conform with a new State Department regulation of May 1964 started its coordination process in November 1964. This was not completed until 9 September 1965. The two primary delays occurred in the Office of Finance and in the DDP. The Deputy Director for Support found it necessary to take direct action to resolve outstanding disagreements in order that the revision might be on our books before the 1965 revision of the State Department regulation. Another telling example of the difficulties in coordinating a Headquarters regulation is the attempt of the Deputy Director for Science and Technology to update its functional

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statement, [] The revision was received by the Regulations Control Staff on 21 December 1964. All directorates had commented by 29 April 1965. Some of the comments indicated such complete divergence of views and positions that the Deputy Director for Science and Technology decided to withdraw the existing version rather than try to achieve a generally accepted new version. A third example is the attempt to update the mission and functions of the Office of Communications. This draft was received by the Regulations Control Staff on 3 March 1964. Because this draft had received considerable informal coordination prior to its submission to the Regulations Control Staff, a five-day limit for coordination was established. On 29 January 1965 the Chief, Publications Control Group/DDP, promised to meet soon with the Office of Communications to redraft [] The revision was finally issued on 16 July 1965.

11. As of 23 June 1965 the Regulations Control Staff/DPS had pending one regulatory issuance dating back to November 1962, five regulatory issuances dating back to 1963, 25 regulatory issuances dating back to 1964, and nine regulatory issuances dating from 1965 but pending for more than four weeks.

12. The difficulties in achieving coordination and promulgation of Headquarters regulations on a timely basis has encouraged the misuse of Headquarters Notices and Book Dispatches in order to keep policy and procedural changes reasonably up to date. [] specifically states that Headquarters [] "shall not be used as the basic medium to convey permanent directives." A recent example of such misuse is [] dated 2 July 1965, which has a header, "This Notice Expires 1 August 1966"; its subject, "Policy on Employment of Members and Former Members of the Peace Corps." Since the Peace Corps will continue to exist beyond 1 August 1966 and the policy enunciated in [] has been Peace Corps and Agency policy almost from the inception of the Peace Corps, an IR would have been called for under Agency regulatory definitions. The explanation for the use of a notice of limited duration rather than a regulation is that expeditious promulgation of this policy was required and coordinators do not look as closely at a notice as they dissect a regulation. It is anticipated that this notice will be converted into an IR or included as an additional item in an existing IR prior to its expiration.

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✓ 13. A fair number of complaints were voiced on the insufficiency of the index for Agency regulatory issuances. On the other hand, the question was raised whether both the complete index and the individual table of contents for each of the categories of regulations are required. There is further dissatisfaction, particularly on the part of the Office of General Counsel, with the organization, paragraphing, and drafting of Agency regulations. From a legal point of view the printing format of amendments of Agency regulations is considered deficient because it does not provide a handy record of the history and nature of all changes.

14. There exists a widespread feeling that the Agency is overloading its regulatory system with too many details and legislates for too many contingency situations. Besides the tendency of technicians to have a regulation for almost anything in their particular area, both top Agency management and the Inspector General are blamed for some of the proliferation of detailed regulations and procedures.

Conclusions

15. The most glaring shortcoming in the current operation of the Agency regulatory issuances system is the long delay in the coordination phase. The problem is not new. It existed at the time of the 1956 Inspector General Survey. Corrective action was then taken so that on 25 March 1957 the Deputy Director for Support reported to the Deputy Director of Central Intelligence: "The large backlog of proposed Regulations for which Deputy Director (Plans) coordination was long overdue has been eliminated. I am pleased to report that as of 1 March 1957 only six subjects of Regulations have been in coordination in Deputy Director (Plans) longer than six weeks and none of these date before 10 December 1956. We must recognize that some subjects are extremely complex and require extensive coordination because of their widespread interest. In general, however, we find that our processing is so geared now that most issuances can be published within a few weeks after initial drafting. Continued efforts will be made to control the coordination process, and I feel we have an effective system to insure prompt publication of proposed regulatory issuances."

16. Backsliding has occurred since then. The 1956 Inspector General Survey explained the coordination delays as follows: "... increasingly the level at which coordination is effected has descended within individual components so that proposed regulations

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are now reviewed in most instances by quite subordinate personnel. Excessive delays and picaresque objections are the result," and prescribed the following remedy: "...we must recapture the initial enthusiasm of 1953 and re-interest senior Agency personnel in the prompt and intelligent review of proposed regulatory material. In instances when coordination of a regulation has bogged down because of excessive delay of a component, the Regulations Control Staff should refer the proposed regulation to the Director of Central Intelligence, through the Initiating Deputy Director, for decision."

17. The current problem can in part be ascribed to the reasons cited in 1956 but it must also be recognized that the continuing stream of drafts of regulatory issuances will of necessity take a back seat in the priority ranking of senior officials. However, interwoven in the delay problem and perhaps its most significant aspect is the continuing DD/P concern that the regulatory process serves to erode the area of DD/P responsibility and to restrict the flexibility which the Clandestine Services need for the effective pursuit of the assigned mission. As a result the coordination becomes a painstaking examination for the "real intent" and "the meaning between the lines." While admittedly generally useful suggestions also accrue, on balance the price for this scrutiny is considerable and probably too high since it makes timely changes or introduction of new regulations discouragingly tedious. In short, regulatory issuances are used as a point of reference for resolving doctrinal differences of view regarding centralized administration in CIA versus a loose federation of almost autonomous directorates.

18. Even in the absence of early resolution of the fundamental differences of view, a number of changes in the mechanics of coordinating regulatory issuances might help to achieve a general speed-up in the working of the system. This can be done without impairing the principles of "cooperative effort" and consent by all affected elements prior to promulgation of new or amendments or changes to regulatory issuances.

a. The now uniform handling of the coordination process through written memoranda requires assistance through face-to-face meetings in those instances where major policy innovations are contemplated or where an impasse has been reached during the coordination of what initially was judged a rather routine matter. For this purpose the Deputy Director for Support

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intends to establish a Committee on Regulations under his chairmanship. Committee membership should not be below the Assistant Deputy Director level or Deputy Chief in the case of the Inspector General and General Counsel. The number of meetings of this committee should probably not exceed three or four a year, but its formal establishment appears to be a requirement to assure its meaningful functioning.

b. Each draft of a regulatory issuance circulated for coordination should carry a deadline for submissions of concurrences or nonconcurrences. The practice of currently not setting such time limits in many instances is understandable in light of poor compliance with deadlines by coordinating offices and lack of enforcement power. However, in the interest of a truly working system, enforcement must be available and exercised. It is recognized that different types of regulatory issuances dealing with matters of different degrees of complexity require a flexible approach in setting coordination deadlines. Paragraph 1.b. of [] establishes therefore no specific number of working days as compared with the Department of State which allows only five working days for coordination. There can be an extension of this limit on the basis of approval of written substantiated requests. No coordination should exceed a calendar month, and in many cases a considerably shorter time period should be sufficient. This is particularly so if the procedure of paragraph 1.b. of [] is followed, requiring that "the office which proposes a regulatory issuance shall obtain the comments of other offices having related or interdependent responsibilities and functions or whose activities or personnel are substantially affected thereby, before submitting it to the Deputy Director for Support" and major policy innovations are resolved per subparagraph a. above. In instances where for valid reasons a longer coordination period is required, exception should be requested with an explanation of the reasons. Noncompliance with coordination deadlines should be brought to the personal attention of the pertinent directorate member of the Committee on Regulations for immediate action.

c. A corollary to establishing realistic deadlines for the coordination process and enforcing them is the return to a continuous hard-headed screening of all proposals for

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new or additional regulations as to the demonstrated need to add to the ever-growing size of our regulatory volumes. Each office originating new regulations should be required to submit a detailed justification for each proposed regulation. The DD/S or his designated representative should not let coordination proceed unless he is satisfied on the question of need. Conversely, coordinating offices should be encouraged to state their view as to the need for new regulations submitted for their coordination and should not simply concur because this appears to be the easier thing to do. This same screening phase should also be used to enforce compliance with the criteria for the different Agency regulatory issuances and not allow the use of notices when a regulation is called for.

d. Finally, the practice of using book dispatches for promulgating regulatory issuances--generally under the pretext of using the book dispatch as advance and temporary vehicle to be replaced by a proper regulation later, but in some instances never--should be stopped. The purpose should not be to circumvent the established regulatory system because a bottleneck has developed, but to make the system

more efficient, therefore, should be to reducing the different types of issuances, not to proliferate them.

19. The foregoing suggestions stay completely within the established system and are simply meant to improve its working efficiency. However, in view of criticism from the Office of General Counsel that drafting, paragraphing, organization, and content and time documentation of changes of regulations need improving, the OGC should be invited to make recommendations for changes in those areas. The anticipated gain from such proposals will then have to be weighed against the considerable cost of conversion in arriving at a decision whether to accept the OGC proposal for implementation.

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